

# SPECIAL CONDITIONS

**Agreement:** shall mean the main terms and conditions, the Schedule and the Special Conditions. If there is an inconsistency between any of the provisions in the main terms and conditions of this agreement and the Special Conditions, the provisions of the Special Conditions shall prevail.

**Commencement date** – “This agreement shall be deemed to have commenced on [DATE] (Commencement Date)”

## 1. PREVENTION OF FRAUD AND BRIBERY - DEFINITIONS

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Default:** any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement

(a) in the case of the Client, of its employees, servants, agents; or

(b) in the case of the Company, of its Sub-Contractors or any Company's Personnel, in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other.

**Effective Date:** the date on which this Agreement is signed by both Parties

**Prohibited Act:** the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Client a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

(ii) under legislation or common law concerning fraudulent acts;

(iii) defrauding, attempting to defraud or conspiring to defraud the Client.

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

**Services:** the services to be delivered by or on behalf of the Company under this agreement.

**Sub-Contract:** any contract or agreement, or proposed contract or agreement between the Company and any third party whereby that third party agrees to provide to the Company the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Company.

**Company's Personnel:** all employees, staff, and other workers of the Company and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

## **1.1 Prevention of Fraud and Bribery**

1.1.1 the Company represents and warrants that neither it, nor to the best of its knowledge any Company's Personnel, have at any time prior to the Effective Date:

(a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

1.1.2 the Company shall not during the term of this Agreement:

(a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Client or any of the Client's employees, Companies, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

1.1.3 the Company shall during the term of this Agreement:

(a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

(b) keep appropriate records of its compliance with its obligations under Clause 1.1.2(a) and make such records available to the Client on request.

1.1.4 the Company shall immediately notify the Client in writing if it becomes aware of any breach of Clause 1.1 and/or 1.1.1, or has reason to believe that it has or any of the Company's Personnel have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

1.1.5 If the Company makes a notification to the Client pursuant to Clause 1.1.3, the Company shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation reasonably required by the Client.

1.1.6 If the Company is in Default under Clauses 1.1 and/or 1.1.1, the Client may by notice:

(a) require the Company to remove from performance of this Agreement any Company's Personnel whose acts or omissions have caused the Default; or

(b) immediately terminate this Agreement.

1.1.7 Any notice served by the Client under Clause 1.1.5 shall specify the nature of the Prohibited Act, the identity of the Party who the Client believes has committed the Prohibited Act and the action that the Client has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## **2. EQUALITY AND DIVERSITY**

the Company shall:

(a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

(i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(ii) the Client's equality and diversity policy as provided to the Company from time to time; and

(iii) any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality Law; and

(b) take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

### 3. DATA PROTECTION

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

#### 3.1 Data processing

- 3.1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 3 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 3.1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Company is the Processor. The Data Protection Schedule sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 3.1.3 Without prejudice to the generality of clause 0.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company and/or lawful collection of the Personal Data by the Company on behalf of the Client for the duration and purposes of this agreement.
- 3.1.4 Without prejudice to the generality of clause 0.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:
- (a) process that Personal Data only on the documented written instructions of the Client unless the Company is required by Domestic Law to otherwise process that Personal Data. Where the Company is relying on Domestic Law as the basis for processing Personal Data, the Company shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Company from so notifying the Client;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include,

where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it) ensuring that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - (i) the Client or the Company has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Company complies with the reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (d) notify the Client immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Client in responding to any request from a Data Subject and in ensuring compliance with the Client's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Client immediately without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 3 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of the Company, an instruction infringes the Data Protection Legislation.

- 3.2 The Company shall indemnify the Client against any losses, damages, cost or expenses incurred by the Client arising from, or in connection with, any breach of the Company's obligations under this clause 3.
- 3.3 Where the Company intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Client in writing of the intended processing by the Sub-Contractor;
  - (b) obtain prior written consent to the processing;
  - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 3.
- 3.4 Either party may, at any time on not less than 30 Days' written notice revise this clause 3 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 3.5 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

### **3.6 Data Protection Schedule**

#### **3.6.1 Data processing**

- (a) The Company shall comply with any further written instructions with respect of processing by the Client.
- (b) Any such further instructions shall be incorporated into this Schedule.
- (c) Processing by the Company
  - i. Scope
  - ii. Nature
  - iii. Purpose of processing
  - iv. Duration of processing
  - v. Types of Personal Data
  - vi. Categories of Data Subject

## **4. HEALTH AND SAFETY**

- 4.1 the Company shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Client Premises.
- 4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Client Premises of which it becomes aware and which relate to or arise in

connection with the performance of this Agreement. The Company shall instruct the Company's personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## **5. FREEDOM OF INFORMATION & ENVIRONMENTAL INFORMATION REGULATIONS - DEFINITIONS**

**Commercially Sensitive Information:** the information listed in schedule [to be confirmed post tender] comprising the information of a commercially sensitive nature relating to the Company, its intellectual property rights or its business or which the Company has indicated to the Client that, if disclosed by the Client, would cause the Company significant commercial disadvantage or material financial loss.

**Confidential Information:** any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Companies of the Company, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.

**Environmental Information Regulations:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Information:** has the meaning given under section 84 of FOIA.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**Services:** the services to be delivered by or on behalf of the Company under this agreement.

**Sub-Contract:** any contract or agreement or proposed contract or agreement between the Company and any third party whereby that third party agrees to provide to the Company the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Company.

## **6. FREEDOM OF INFORMATION & ENVIRONMENTAL INFORMATION REGULATIONS**

6.1 the Company acknowledges that the Client is subject to the requirements of the FOIA and the EIRs. The Company shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Client all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Client with a copy of all Information belonging to the Client requested in the Request For Information which is in its possession or control in the form that the Client requires within 5 Working Days (or such other period as the Client may reasonably specify) of the Client's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Client.

6.2 the Company acknowledges that the Client may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Company. The Client shall take reasonable steps to notify the Company of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Client shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **7. INDEMNITY**

the Company agrees with the Client throughout the term to indemnify and keep indemnified the Client from and against any and all loss, damage or liability suffered and legal fees and costs incurred by the Client resulting from a breach of this Agreement by the Company including:

- 7.1.1 any act neglect or default of the Company's employees or agents or;
- 7.1.2 breaches in respect of any matter arising from the supply of the Services resulting in any claim by a third party.

7.2 The Client shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any death accident or injury to any workman or other person in the employment of the Company (including agents or sub-contractors) save and except to the extent that such accident or injury results from or is contributed to by any act or default of the Client their agents or servants and the Company shall indemnify and keep indemnified the Client against all such damages



and compensation (save and except as aforesaid) and against all claims demands proceedings costs charges and expenses whatsoever in respect thereof or in relation thereto.

## **8. INSURANCE**

8.1 The Company shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

(a) Public liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;]

(b) Employer's liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;]

(c) Professional indemnity insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims and shall ensure that all professional Companys or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;]

(d) Product liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims.

(the Required Insurances) The cover shall be in respect of all risks which may be incurred by the Company, arising out of the Company's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Company.

8.2 The Company shall give the Client, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

8.3 If, for whatever reason, the Company fails to give effect to and maintain the Required Insurances, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Company.

8.4 The terms of any insurance or the amount of cover shall not relieve the Company of any liabilities under the agreement.

## **9. ANTI-SLAVERY AND HUMAN TRAFFICKING**

### **9.2 Compliance with Anti-Slavery and Human Trafficking Laws and Policies**

In performing its obligations under the agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- (b) Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (c) Ensure that each of its subcontractors and suppliers shall comply with with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

### **9.3 Due Dilligence**

The Supplier represents and warrants that at the date of this agreement:

- 9.3.1 its responses to the Customer's slavery and human trafficking due diligence questionnaire are complete and accurate; and
- 9.3.2 neither the Supplier nor any of its officers, employees or other persons associated with it:
  - 9.3.2.1 has been convicted of any offence involving slavery and human trafficking; and
  - 9.3.2.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 9.3.3 The Supplier shall implement due diligence procedures for its subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

### **9.4 Country-Specific Clauses**

The Supplier undertakes not to purchase any materials has been sourced from producers using forced labour or child labour in its operations.

### **9.5 Subcontracting**

- 9.5.1 The Supplier shall not subcontract its obligations under this agreement without the prior written consent of the Customer.

## **9.6 Reports**

- 9.6.1 The Supplier shall notify the Customer as soon as it becomes aware of any breach, or potential breach, of Anti-slavery Laws

The Supplier shall:

- 9.6.2 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Customer in connection with this agreement.

## **9.7 Training**

- 9.7.1 The Supplier shall implement a system of training for its employees to ensure compliance with the Anti-slavery Policy.

## **9.8 Indemnity**

The Supplier shall indemnify the Customer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Customer as a result of any breach of Anti-slavery Policy.

## **9.9 Warranties**

The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery Policy.

## **9.10 Termination**

The Customer may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of the Anti-slavery Policy.